



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 22 and 90**

**[DA 12-643]**

Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend Acceptance and Processing of Certain Applications for 470-512 MHz Spectrum

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; limited suspension of specific applications.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) announce a limited suspension of the acceptance and processing of certain applications for certain services operating in the 470-512 MHz (T-Band) spectrum band in order to maintain a stable spectral landscape while the Commission determines how to implement recent spectrum legislation contained in the Middle Class Tax Relief and Job Creation Act of 2012. The suspension applies only to applications for new or expanded use of T-Band frequencies.

**DATES:** This suspension is effective [Insert Date of Publication]. It has been enforced with actual notice since April 26, 2012.

**ADDRESSES:** Federal Communications Commission, 445 12<sup>th</sup> St., SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information or questions, please contact Mr. Keith Harper of the Wireless Telecommunications Bureau, (202) 418-2759, [Keith.Harper@fcc.gov](mailto:Keith.Harper@fcc.gov), regarding Part 22 applications; Mr. Terry Fishel of the Wireless Telecommunications Bureau, (717) 338-2602, [Terry.Fishel@fcc.gov](mailto:Terry.Fishel@fcc.gov), regarding Part 90 Industrial/Business Pool applications; or Mr. Tracy Simmons of the Public Safety and Homeland Security Bureau, (717) 338-2657, [Tracy.Simmons@fcc.gov](mailto:Tracy.Simmons@fcc.gov), regarding Part 90 Public Safety Pool applications.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Public Notice, ("PN") in DA 12-643, which was released on April 26, 2012. The full text of this document available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> St., SW., Room CY-A257, Washington, DC, 20554 or by downloading the text from the Commission's website at <http://www.fcc.gov/>. The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, Suite CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to <[FCC504@fcc.gov](mailto:FCC504@fcc.gov)> or calling the Consumer and Government Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### **Synopsis of the Public Notice**

On April 26, 2012, the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau released a Public Notice which suspended the acceptance and processing of certain applications for Part 22 and 90 services operating in the 470-512 MHz spectrum band (T-Band). The suspension will serve to stabilize the spectral environment while the Commission considers issues surrounding future use of the T-Band, solicits input from interested parties, and determines how best to implement recent spectrum legislation contained in the Middle Class Tax Relief and Job Creation Act of 2012.<sup>1</sup>

The filing and processing suspension applies only to applications for new or expanded use of T-Band frequencies for the following radio services in the 470-512 MHz band:

Part 22 Public Mobile Services: Paging and Radiotelephone (radio service code CD), Offshore Radiotelephone (radio service code CO)

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<sup>1</sup> Public Law No. 112-96, 126 Stat. 156 (2012). Section 6103 of the Act provides that, not later than nine years after the date of enactment, the Commission shall "reallocate the spectrum in the 470-512 MHz band ... currently used by public safety eligibles ...." *Id.* at 6103(a). The Act instructs the Commission to "begin a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for the use of the spectrum." *Id.* It also provides that

Part 90 Industrial/Business Pool: Industrial/Business Pool - Conventional (radio service code IG), Industrial/Business Pool - Commercial, Conventional (radio service code IK), Industrial/Business Pool - Trunked (radio service code YG), Industrial/Business Pool - Commercial, Trunked (radio service code YK)

Part 90 Public Safety Pool: Public Safety Pool - Conventional (radio service code PW), Public Safety Pool - Trunked (radio service code YW).

As such, effective immediately and until further notice, the Bureaus will not accept or process (1) applications for new licenses; (2) applications that seek to modify existing licenses by adding or changing frequencies or locations; (3) applications that seek to modify existing licenses by changing technical parameters in a manner that expands the station's spectral or geographic footprint, such as, but not limited to, increases in bandwidth, power level, antenna height, or area of operation; and (4) any other application that could increase the degree to which the 470-512 MHz band currently is licensed. We clarify that affected applications that are now pending will not be further processed until the Commission decides how to implement the Act, except that defective applications and applications in return status that are not timely resubmitted will be dismissed.

The decision to impose this suspension is procedural in nature, and therefore is not subject to the notice, comment, and effective date requirements of the Administrative Procedure Act.<sup>2</sup> Moreover, there was good cause for not delaying the effect of the suspension until after

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"relocation of public safety entities from the T-Band Spectrum" shall be completed not later than two years after completion of the system of competitive bidding. *Id.* at 6103(b) and (c).

<sup>2</sup> See 5 U.S.C. 553(b)(A), (d); see also, e.g., *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637-38 (D.C. Cir. 1984) (holding that the Commission's filing freeze is a procedural rule not subject to the notice and

publication in the Federal Register. Such a delay would have been impractical, unnecessary, and contrary to the public interest because it would undercut the purposes of the suspension.<sup>3</sup>

## **Procedural Matters**

### **1. Paperwork Reduction Act Analysis**

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork relief Act of 2002, Public Law 107-198, See 44 U.S.C. 3506(c)(4).

### **2. Congressional Review Act**

The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Public Notice in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone,  
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Wireless Telecommunications Bureau

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comment requirements of the Administrative Procedure Act); Buckeye Cablevision, Inc. v. United States , 438 F.2d 948, 952-53 (6th Cir. 1971).

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<sup>3</sup> See 5 U.S.C. 553(b)(B), (d)(3).